

**ST 03-1**

**Tax Type: Sales Tax**

**Issue: Machinery & Manufacturing Equipment Exemption (Agricultural)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**v.**

**JOHN DOE**

**Taxpayer**

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**Docket No. 02-ST-0000**

**IBT # 0000-0000**

**NTL # 00 00000000000000**

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**RECOMMENDATION FOR DISPOSITION**

**Synopsis:**

On March 4, 1998, JOHN DOE (“taxpayer”) purchased a tractor and did not pay use tax on the purchase. The Department of Revenue (“Department”) issued a Notice of Tax Liability that assessed use tax on the purchase. The taxpayer timely protested the Notice. The parties have filed a joint stipulation of facts, and the taxpayer has submitted arguments supporting his claim that the tractor qualifies for the farm machinery and equipment exemption. The parties have requested that this matter be resolved based on their written submissions. After reviewing the documents, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On March 4, 1998, the taxpayer purchased a Caterpillar 955K #00000000 Crawler tractor for \$17,500 from ABC Oil Company of Anywhere, Illinois. (Stip. #1)

2. In 1998, the taxpayer purchased approximately 70 acres of land that had previously been in the Federal Conservation Reserve Program. The taxpayer intended to use half of the land for corn and hay production and the other half for pasture for cattle and goats. (Joint Ex. #4)

3. In 1998, the taxpayer used the tractor approximately 50 to 70 hours to control scattered thorny locust, multiflora rose, and autumn olive from the crop production fields by tillage. He also used it approximately 50 to 70 hours to clean and reseed grass waterways in the crop production fields. (Joint Ex. #4)

4. In 1998, the taxpayer used the tractor approximately 75 to 100 hours to repair and stop leakage in the dam of the livestock watering pond. The pond was leaking through a shale bed at the corner of the dam, and 150 feet had to be removed and filled in with clay in order to provide adequate water for the livestock. (Joint Ex. #4)

5. In 1999, the taxpayer used the tractor approximately 40 to 50 hours to pull rolling cutter in the pasture to control multiflora rose and thorny locust. He also used it approximately 40 to 50 hours to repair the fence around the pasture. (Joint Ex. #4)

6. In 1999, the taxpayer used the tractor approximately 15 to 20 hours to level and prepare the pasture area for seeding. He also used it approximately 10 to 12 hours to load manure from the livestock loafing area. (Joint Ex. #4)

7. In 2000, he used the tractor approximately 5 to 10 hours to spread limestone in the wooded pasture used by the cattle. He used it approximately 40 to 50 hours to build an irrigation water reservoir to provide water for hay production. (Joint Ex. #4)

8. In 2000, the taxpayer used the tractor approximately 10 to 15 hours to pull rolling cutter to control multiflora rose and thorny locust from the pasture. He used it approximately 5 to 10 hours to carry large bales of hay to the livestock during the winter months. (Joint Ex. #4)

9. In 2001, the taxpayer used the tractor approximately 5 to 10 hours to carry fill dirt used to level and build up the floor in the cattle loafing shed barn. He also used it approximately 20 to 30 hours to build a fence around the livestock pasture and 5 to 10 hours to pull rolling cutter to control multiflora rose and thorny locust in the pasture. (Joint Ex. #4)

10. On December 19, 2001, the Department issued a Notice of Tax Liability to the taxpayer showing use tax in the amount of \$1,094 plus interest due on the purchase of the tractor. (Joint Ex. #8)

#### CONCLUSIONS OF LAW:

The Use Tax Act (“Act”) (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 12 of the Act incorporates by reference section 4 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Notice of Tax Liability issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 120/4.

Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987). To prove its case, a taxpayer must present more than its

testimony denying the Department's assessment. Sprague v. Johnson, 195 Ill.App.3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support its claim for an exemption. Id.

It is well-settled that tax exemption provisions are strictly construed in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill.2d 576, 579 (1975). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.

The Department denied the exemption because it believed that the majority of the jobs performed with the tractor were maintenance activities that do not qualify for the exemption. The Department did not provide additional arguments in support of its position.

The taxpayer contends that he does not owe use tax on the purchase of the tractor because it qualifies for the farm machinery and equipment exemption. Exemptions from the use tax are included under section 3-5, which provides in part as follows:

“Use of the following tangible personal property is exempt from the tax imposed by this Act:

(11) Farm machinery and equipment, both new and used, including that manufactured on special order, certified by the purchaser to be used primarily for production agriculture or State or federal agricultural programs \* \* \*.

Farm machinery and equipment shall include precision farming equipment that is installed or purchased to be installed on farm machinery and equipment including, but not limited to, tractors, harvesters, sprayers, planters, seeders, or spreaders. \*  
\* \* (35 ILCS 105/3-5(11).)

Section 3-35 of the Act provides a definition of production agriculture and states as follows:

“For purposes of this Act, “production agriculture” means the raising of or the propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food

product, including the husbandry of blood stock as a main source of providing a food product. \* \* \*” (35 ILCS 105/3-35.)

Farm machinery and equipment that is used more than 50% of the time for production agriculture constitutes use “primarily” for production agriculture. (See ST 01-0202 GIL<sup>1</sup>) The taxpayer contends that he used his tractor 100% for production agriculture. He says that he did not use it to maintain the area but to develop the land for the intended use of raising livestock and field crops.

The facts indicate that the taxpayer used the tractor more than 50% of the time to cultivate the land in order to prepare it for raising crops and livestock. He used it to till the soil and to carry dirt to repair the fence, level the pasture area, level the floor in the cattle barn, and build the dam. He used it to load manure from the livestock area, to spread limestone in wooded pastures, and to control weed and thorny brush from the crops. He used it to carry large bales of hay to the livestock and to provide water for the animals and the hay production. The tractor was never used off the farm premises or for any purpose other than activities related to the farm. The tractor was primarily used for production agriculture.

Recommendation:

For the foregoing reasons, it is recommended that the tractor qualifies for the farm machinery and equipment exemption.

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Linda Olivero  
Administrative Law Judge

Enter: December 30, 2002

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<sup>1</sup> General Information Letter issued by the Department on September 26, 2001.